Sears, Roebuck and Co. and District Lodge No. 71, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 17-RC-9113

April 21, 1982

DECISION ON REVIEW AND DIRECTION OF ELECTION

By Members Fanning, Jenkins, and Zimmerman

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on September 24, 1980, before Hearing Officer Julie K. Hughes. On October 10, 1980, the Regional Director for Region 17 issued a Decision and Order dismissing the instant petition, in which he found that Petitioner's requested unit of automotive center employees was inappropriate for collective-bargaining purposes. The Regional Director found that the automotive center employees and other store employees constituted a single homogeneous grouping and, therefore, that the only appropriate unit for collective bargaining was a single storewide unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, Petitioner filed a timely request for review of the Regional Director's Decision, contending, inter alia, that the Regional Director departed from official Board precedent in finding the requested unit inappropriate for bargaining. The Employer filed a statement in opposition to Petitioner's request for review.

By telegraphic order dated November 28, 1980, the Board granted Petitioner's request for review. Thereafter, the Employer filed a brief on review in support of the Regional Director's findings.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding, including the briefs of the parties, and finds, in agreement with Petitioner, that a unit of automotive center employees is appropriate for collective bargaining.

The Employer is a New York corporation engaged in the operation of a retail store and an automobile service center at its Independence, Missouri, location. The Employer's facility has approximately 140,000 square feet on two levels. The auto service center occupies approximately one-third of the store's upper level. The function of the auto service center is to sell and install automotive parts and accessories, and to perform basic automobile serv-

ices and repairs. The auto center consists of an automotive sales area located adjacent to the main aisle of the retail department store, and an auto repair shop which is attached to the main store but separated by a wall. The repair shop is accessible through a door from the automotive sales area and from an adjacent parking lot. The repair shop itself contains bays in which automobile repairs and installations are performed, a parts area with a window, and a tire and battery storage area.

The auto center manager, Jon Iennaccaro, supervises all functions of the auto center. Iennaccaro is assisted by Joe Velder, the division manager of the automotive sales area, and Laverne Dierking, the division manager of the auto repair shop. Each of these managers was stipulated to be a supervisor within the meaning of Section 2(11) of the Act. The auto center employs 33 full-time and regular part-time employees, including 4 full-time and 3 part-time sales employees, 6 full-time and 1 parttime mechanics, 2 full-time and 8 part-time tire and battery installers, 1 part-time parts employee, 1 fulltime and 4 part-time cashiers, 2 full-time service writers, and 1 part-time receiver. Only 7 of these 33 employees have transferred into the auto center from elsewhere in the retail store since the store opened in 1976. Unlike the retail store, which opens for business at 10 a.m., the auto center opens at 7:30 a.m. throughout the week. Normally, two sales employees are required to be present at the center by 7:30 a.m. in order to take customer orders and, in turn, generate work for the mechanics who begin work at 8 a.m.

Employees in the auto center are paid under three different methods of compensation: Sales personnel by a commission based on their sales; mechanics by a guaranteed salary plus a commission for additional work performed over a set amount;1 and cashiers and other nonselling employees by an hourly wage. Mechanics and tire and battery installers are required to wear uniforms provided by the Employer, and the mechanics are required to furnish their own tools. The mechanics spend substantially all of their time performing engine tuneups, front-end alignments, brake overhauls, and other mechanical work which involves the exercise of substantial skill. The tire and battery installers mount and balance tires, install batteries, and perform other tasks requiring less skilled work of a routine, general nature. The auto center's sales employees sell automobile parts, accessories, and merchandise, and write up customer orders for me-

¹ Mechanics also receive a commission based on additional work performed due to their discovery of other problems in a customer's car. In these situations, the mechanic originating such work receives what would otherwise be the salesman's commission.

chanical work, in the automobile sales area.² These sales employees are required to wear business attire and are permanently assigned to the auto center.3 The auto center cashiers ring up sales and accept customers' payments. As in the retail store, the cash registers in the auto center are set up so as to allow customers to purchase merchandise from any department and pay at any register.

There is substantial and frequent interaction among the auto center employees. The salesmen have basic mechanical knowledge and are familiar with merchandise stock and the functions of mechanics and installers. They write up the work order tickets which are, in turn, routed to the mechanics and installers through the dispatcher. If mechanics discover an additional problem with a customer's vehicle, they will inform the salesman who wrote the original work order. The salesman, in turn, will inform the customer and seek the customer's assent for the additional work. In some instances, mechanics speak directly to customers regarding serious problems and then, if the customer wishes additional work performed, refer the matter back to the customer's salesman. That salesman will then write up a work order for the additional repairs. The auto center cashiers calculate the payment due for all sales and mechanical work from the work order ticket turned in by the mechanic or installer. The parts employee is responsible for supplying all necessary parts and materials to the mechanics and installers, per their requests.

The auto center employees work under the separate immediate supervision of their department and division managers. Evaluations of those employees are the responsibility of the auto center managers,4 although these evaluations are thereafter reviewed with a member of the overall store management. Similarly, all employees are hired through the Employer's personnel office and receive a preliminary interview in that office. However, applicants for auto center positions are further interviewed by the auto center manager, Iennaccaro, or by the automotive sales division manager, Velder, who then makes an independent recommendation as to whether the applicant should be hired. Store Manager Green testified that he did not know of any instance when such a recommendation was not

on an as-needed basis to another department of the retail store, usually a

department immediately adjacent to the auto center.

honored. The auto center also operates independently of the retail store in several important respects. First, as noted supra, the auto center has hours substantially different from those of the retail store. Second, the auto center sets up its own employee vacation schedule which is independent of the scheduling of other departments in the retail store. Third, in addition to monthly storewide meetings held by the store manager and to which all employees are encouraged to attend, the auto center holds its own meetings attended by auto center employees only to discuss departmental issues.

In dismissing the petition and determining that the only appropriate unit is a storewide unit, the Regional Director relied on the following facts: The role of the personnel department in hiring new employees, as set forth above; all new employees attend common orientation classes; all employees punch timeclocks, receive essentially the same fringe benefits, use the same store entrance and breakroom, are paid weekly, are transferred on a temporary basis between departments as needed, and are required to assist customers regardless of departmental lines; and the physical setup of the store's cash registers which, as noted earlier, permits customers to select merchandise from any department and pay at any register.

In reviewing the Regional Director's Decision, we are guided by the well-settled canon that Section 9(b) of the Act directs the Board to make appropriate unit determinations which will "assure to employees the fullest freedom in exercising the rights guaranteed by this Act"; i.e., the rights of self-organization and collective bargaining.⁵ We have stressed on repeated occasions that the Act does not compel labor organizations to seek representation in the most comprehensive grouping of employees unless such grouping constitutes the only appropriate unit. 6 Thus, the sole inquiry here is whether a unit consisting of employees of the auto center is appropriate in the circumstances of this case. To this determination, it is irrelevant whether another unit would also be appropriate, more appropriate, or most appropriate.

In the instant case, some factors do exist which militate against finding the requested unit appropriate, such as common benefits, common overall supervision by the store manager, some small degree of operational and functional interchange, and a degree of centralization rather remote from the in-

² Although some automotive merchandise of a general nature, such as oil, may be sold in other areas of the retail store, an auto center salesman is not assigned to those other areas to sell that merchandise. ³ On infrequent occasions, auto center sales employees may be assigned

Such evaluations remain the responsibility of the auto center managers even if a center employee has been temporarily assigned to another department during part of the evaluation period. The supervisor of the department to which the employee was assigned does not participate in the employee's evaluation.

⁵ J. C. Penney Company, Inc., Store Number 1302, 196 NLRB 708, 709 (1972); Sears, Roebuck and Co., 191 NLRB 398, 404 (1971); Sears, Roebuck and Co., 184 NLRB 343, 346 (1970); Montgomery Ward & Co., Incorporated, 150 NLRB 598, 600-601 (1964).

dividual employees' day-to-day work. However, we find that the facts set forth above and discussed below persuasively show that a unit limited to auto center employees is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

There is here, as the Regional Director found, "a great deal of interaction between employees within the [auto center]" and, as the record shows, limited interaction with other store employees. Although there is some integration of activities between auto center employees and other store employees, such integration extends only to those rare situations where an auto center employee is temporarily assigned to work in another department or is called to assist a customer in another department, or where a customer brings merchandise from other departments to a cashier in the auto center for payment. These elements are minor in their impact on employees' day-to-day activities, and thus the small degree of integration does not extend to the job functions of the employees in issue or separate them from their fellow employees in the auto center so as to make the group non-homogeneous. Also, the factors set forth above which militate against finding the requested unit appropriate are greatly outweighed by the strong community of interest shared by all auto center employees, as evidenced by their separate immediate and secondlevel supervision, their different working hours and separate vacation schedules, their separate departmental meetings, their separate and readily identifiable work area, and, perhaps most importantly, their separate group identity, arising from working in a recognized product line separate and distinct from that of the retail store. Moreover, the requested unit of auto center employees contains a nucleus of craft employees (the mechanics) around whom the other auto center employees are organized, and includes all employees working in two of the Employer's administrative divisions. In contrast to the lack of integration between auto center and other store employees, employees in the auto center are greatly dependent upon one another for the continued operation of the center itself and for their individual livelihoods. Indeed, unlike the obvious interdependency of the auto center employees, the record reveals the absence of any close relationship between the work of the requested employees and any other group of employees at the retail store.

Upon the foregoing and the entire record in this case, we conclude that the auto center employees have limited contact with the other store employees, and constitute a functionally integrated group working in a recognized product line under separate supervision who share a community of interest that sufficiently differentiates them from the other store employees and functions as to require the conclusion that they constitute an appropriate unit. Moreover, there is no bargaining history among this unit of employees and no labor organization seeks to represent these employees as part of a broader unit.

Accordingly, we find that a unit of auto center employees is appropriate, and we shall reinstate the petition and direct an election in the following unit:

All full-time and regular part-time employees in the automotive department at the Employer's Independence, Missouri, facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

[Direction of Election and Excelsior footnote omitted from publication.]

⁷ Sears, Roebuck & Co., 182 NLRB 609 (1970).

⁸ Montgomery Ward & Co., Incorporated, 225 NLRB 547 (1976).